



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
097594,445	06/15/00	GRIJALVA	B GRIJ-0002-US

QZ11/0730

FRED G PRUNER JR
TROP PRUNER & HU PC
8554 KATY FREEWAY SUITE 100
HOUSTON TX 77024

EXAMINER
HAMILTON, L

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 07/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/594,445	Applicant(s) GRIJALVA, BETH N.	
Examiner HAMILTON	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 May 2001.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 7,21 and 45 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) 7,21 and 45 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Sharon N. Thornton
SHARON N. THORNTON
PATENT ANALYST

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s) _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Summary

On January 30, 2001, an Office Action was sent to the applicant rejecting claims 1-6, 8-20, and 22-38 and objecting claims 7 and 21. On May 9, 2001, the applicant responded by amending claims 30 and 34 and adding new claims 39-45.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-20, 22-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oviatt in view of Grindle ('401).

Oviatt discloses the invention substantially as claimed; however, Oviatt does not disclose a fastening means for attachment to the bridge or a releasable connector. Grindle teaches a lens occluder comprising a fastening means for attachment to the bridge (fig.1:22) and a releasable connector (fig.2:35-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a fastening means into Oviatt's device for attachment of the body to the bridge and releasable connector to allow the user to remove the device when desired.

Allowable Subject Matter

Claims 7, 21, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed on May 9, 2001 have been fully considered but they are not persuasive. The applicant argued that the Grindle reference did not teach a flexible body adapted to substantially block the peripheral of the eye, citing that Grindle "permits light and air to enter around the sides". The examiner would like to point out to the applicant that the Grindle reference was used as a secondary reference and not the primary reference. Oviatt taught the flexible body adapted to substantially block the peripheral of the eye. The applicant further argued that neither Grindle nor Oviatt taught the attachment of the patch to the bridge of the nose via a fastener, but instead taught attachment to the nose pad. The examiner is interpreting the Grindle reference as clearly being attached to the bridge of the nose via a fastener (fig.1:32, 22, and 35).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3764


TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Monday-Friday (8:30-4:30) alternate Fridays-off.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-

2272.



LMH

July 29, 2001

Michael A. Brown
Primary Examiner